

By: West

S.B. No. 1071

A BILL TO BE ENTITLED

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AN ACT

relating to a person's eligibility for an order of nondisclosure with respect to certain criminal history records and to certain law enforcement duties that result from the issuance of an order.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 411.081, Government Code, is amended by amending Subsections (d), (g), and (h) and by adding Subsections (g-1), (g-2), (i), and (j) to read as follows:

(d) Notwithstanding any other provision of this subchapter, if a person is placed on deferred adjudication community supervision under Section 5, Article 42.12, Code of Criminal Procedure, subsequently receives a discharge and dismissal under Section 5(c), Article 42.12, and satisfies the requirements of Subsection (e), the person may petition the court that placed the defendant on deferred adjudication for an order of nondisclosure under this subsection. Except as provided by Subsection (e), a person may petition the court under this subsection regardless of whether the person has been previously placed on deferred adjudication community supervision for another offense. After notice to the state and a hearing on whether the person is entitled to file the petition and issuance of the order is in the best interest of justice, the court shall issue an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense giving rise to

1 the deferred adjudication. A criminal justice agency may disclose
2 criminal history record information that is the subject of the
3 order only to other criminal justice agencies, for criminal justice
4 or regulatory licensing purposes, an agency or entity listed in
5 Subsection (i), or the person who is the subject of the order [~~an~~
6 ~~individual or agency described by Section 411.083(b)(1), (2), or~~
7 ~~(3)~~]. A person may petition the court that placed the person on
8 deferred adjudication for an order of nondisclosure on payment of a
9 \$28 fee to the clerk of the court in addition to any other fee that
10 generally applies to the filing of a civil petition. The payment
11 may be made only on or after:

12 (1) the discharge and dismissal, if the offense for
13 which the person was placed on deferred adjudication was a
14 misdemeanor other than a misdemeanor described by Subdivision (2);

15 (2) the second [~~fifth~~] anniversary of the discharge
16 and dismissal, if the offense for which the person was placed on
17 deferred adjudication was a misdemeanor under Chapter 20, 21, 22,
18 25, 42, or 46, Penal Code; or

19 (3) the fifth [~~10th~~] anniversary of the discharge and
20 dismissal, if the offense for which the person was placed on
21 deferred adjudication was a felony.

22 (g) When an order of nondisclosure is issued under this
23 section [~~subsection~~], the clerk of the court shall send a copy of
24 the order by certified mail, return receipt requested, to the Crime
25 Records Service of the Department of Public Safety. Not later than
26 10 business days after receipt of the order, the [~~The~~] Department of
27 Public Safety shall seal any criminal history record information

1 maintained by the department that is the subject of the order. The
2 department shall also send a copy of the order by mail or electronic
3 means to all:

4 (1) law enforcement agencies, jails or other detention
5 facilities, magistrates, courts, prosecuting attorneys,
6 correctional facilities, central state depositories of criminal
7 records, and other officials or agencies or other entities of this
8 state or of any political subdivision of this state;

9 (2) [~~and to all~~] central federal depositories of
10 criminal records that there is reason to believe have criminal
11 history record information that is the subject of the order; and

12 (3) private entities that purchase criminal history
13 record information from the department.

14 (g-1) Not later than 30 business days after receipt of an
15 order from the Department of Public Safety under Subsection (g), an
16 individual or entity described by Subsection (g)(1) shall seal any
17 criminal history record information maintained by the individual or
18 entity that is the subject of the order.

19 (g-2) A person whose criminal history record information
20 has been sealed under this section is not required in any
21 application for employment, information, or licensing to state that
22 the person has been the subject of any criminal proceeding related
23 to the information that is the subject of an order issued under this
24 section.

25 (h) The clerk of a court that collects a fee under
26 Subsection (d) shall remit the fee to the comptroller not later than
27 the last day of the month following the end of the calendar quarter

1 in which the fee is collected, and the comptroller shall deposit the
2 fee in the general revenue fund. The Department of Public Safety
3 shall submit a report to the legislature not later than December 1
4 of each even-numbered year that includes information on:

5 (1) the number of petitions for nondisclosure and
6 orders of nondisclosure received by the department in each of the
7 previous two years;

8 (2) the actions taken by the department with respect
9 to the petitions and orders received; ~~and~~

10 (3) the costs incurred by the department in taking
11 those actions; and

12 (4) the number of persons who are the subject of an
13 order of nondisclosure and who became the subject of criminal
14 charges for an offense committed after the order was issued.

15 (i) A criminal justice agency may disclose criminal history
16 record information that is the subject of an order of nondisclosure
17 to the following noncriminal justice agencies or entities only:

18 (1) the State Board for Educator Certification;

19 (2) a school district, charter school, private school,
20 regional education service center, commercial transportation
21 company, or education shared service arrangement;

22 (3) the Texas State Board of Medical Examiners;

23 (4) the Texas School for the Blind and Visually
24 Impaired;

25 (5) the Board of Law Examiners;

26 (6) the State Bar of Texas;

27 (7) a district court regarding a petition for name

1 change under Subchapter B, Chapter 45, Family Code;

2 (8) the Texas School for the Deaf;

3 (9) the Department of Family and Protective Services;

4 (10) the Texas Youth Commission;

5 (11) the Department of Assistive and Rehabilitative
6 Services;

7 (12) the Department of State Health Services, a local
8 mental health service, a local mental retardation authority, or a
9 community center providing services to persons with mental illness
10 or retardation;

11 (13) the Texas Private Security Board;

12 (14) a municipal or volunteer fire department;

13 (15) the Board of Nurse Examiners;

14 (16) a safe house providing shelter to children in
15 harmful situations;

16 (17) a public or nonprofit hospital or hospital
17 district;

18 (18) the Texas Juvenile Probation Commission;

19 (19) the securities commissioner, the banking
20 commissioner, the savings and loan commissioner, or the credit
21 union commissioner;

22 (20) the Texas State Board of Public Accountancy; and

23 (21) the Texas Department of Licensing and Regulation.

24 (j) If the Department of Public Safety receives information
25 indicating that a private entity that purchases criminal history
26 record information from the department has been found by a court to
27 have committed five or more violations of Section 552.1425 by

1 compiling or disseminating information with respect to which an
2 order of nondisclosure has been issued, the department may not
3 release any criminal history record information to that entity
4 until the first anniversary of the date of the most recent
5 violation.

6 SECTION 2. Article 35.12, Code of Criminal Procedure, is
7 amended to read as follows:

8 Art. 35.12. MODE OF TESTING. (a) In testing the
9 qualification of a prospective juror after the juror [~~he~~] has been
10 sworn, the juror [~~he~~] shall be asked by the court, or under its
11 direction:

12 1. Except for failure to register, are you a qualified
13 voter in this county and state under the Constitution and laws of
14 this state?

15 2. Have you ever been convicted of theft or any felony?

16 3. Are you under indictment or legal accusation for
17 theft or any felony?

18 (b) In testing the qualifications of a prospective juror,
19 with respect to whether the juror has been the subject of an order
20 of nondisclosure or has a criminal history that includes
21 information subject to that order, the juror may state only that the
22 matter in question has been sealed.

23 SECTION 3. The changes in law made by this Act relating to a
24 person's eligibility for an order of nondisclosure apply to
25 criminal history record information related to a deferred
26 adjudication or similar procedure described by Subsection (f),
27 Section 411.081, Government Code, regardless of whether the

1 deferred adjudication or procedure is entered before, on, or after
2 the effective date of this Act.

3 SECTION 4. This Act takes effect September 1, 2005.

COMMITTEE AMENDMENT NO. 1

Amend S.B. No. 1071 (engrossed version), in SECTION 1 of the bill, in amended Subsection (d), Section 411.081, Government Code, as follows:

(1) Strike the language between "the person may" and "for an order of nondisclosure" on page 1, lines 14-15, and substitute "file an ex parte petition with the district court [~~that placed the defendant on deferred adjudication~~]".

(2) Strike the language between "A person may" and "for an order of nondisclosure" on page 2, lines 7-8, and substitute "file an ex parte petition with the district court".

79R17755 PEP-F

Hegar